

REMARKS

With entry of the present amendment claims 1 to 3 and 5 to 53 are pending. Claim 1 has been amended and claim 4 canceled to comply with the restriction requirement. Claim 37 has been amended to overcome the rejection under 37 C.F.R. § 112, second paragraph. No new matter has been added by these amendments.

No additional fees are believed due. However, the Director is hereby authorized to charge any deficit, or credit any overpayment, to Deposit Account No. 08-2525.

RESTRICTION REQUIREMENT

The claims have been restricted to the following four groups:

- I. The instances wherein Q represents nitrogen, classified in class 546, subclass 278.4+.
- II. The instances wherein Q represents carbon, classified in class 548, subclass 543+.
- III. Claims 50 and 51, drawn to multiple processes, classified in classes 546 and 548.
- VII. Claims 52 and 53, drawn to multiple uses, classified in class 514.

In accordance with the restriction requirement, "Q is =N-" has been removed from claim 1 and claim 4 has been canceled. Claims 1 to 3 and 5 to 49 read on Group II.

Claims 50 to 53 depend from claim 1 and, thus, include all of the limitations thereof. In accordance with M.P.E.P. § 821.04, Applicants hereby request rejoinder of process claims 50 to 53.

REJECTION OF CLAIM 37 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claim 37 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite. In particular, the plural 's' on "mixtures" and the phrase "as well as ... thereof" were objected to. Claim 37 has been amended to recite "or an individual isomer, racemic or non-racemic mixture thereof." For at least these reasons, Applicants respectfully request reconsideration and withdrawal of this rejection.

PROVISIONAL REJECTION OF CLAIMS 1 TO 3 AND 5 TO 49 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING

Claims 1 to 3 and 5 to 49 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 to 68 of copending Application No. 10/666,594.

Both the present application and Application No. 10/666,594 are pending. Amendment of the claims in the instant application to overcome the rejection under 35 U.S.C. § 112, second paragraph, and to correspond with the restriction requirement should render the claims allowable, except for the provisional double patenting rejection. In accordance with M.P.E.P. § 804(I)(B), where "the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as

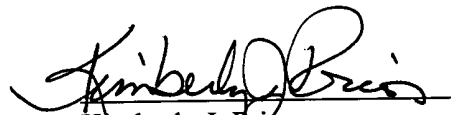
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a patent.” For at least these reasons, Applicants respectfully request withdrawal of the provisional double patenting rejection in the instant application.

The foregoing amendment is fully responsive to the Office Action issued December 16, 2004. Applicants submit that Claims 1 to 3 and 5 to 53 are allowable. Early and favorable consideration is earnestly solicited.

If the Examiner believes there are other issues that can be resolved by telephone interview, or that there are any informalities remaining in the application which may be corrected by Examiner’s Amendment, a telephone call to the undersigned attorney is respectfully solicited.

Respectfully submitted,



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